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12 [Additional counsel identified  
 on signature pages.]

13 **UNITED STATES DISTRICT COURT**  
 14 **NORTHERN DISTRICT OF CALIFORNIA**  
 15 **SAN FRANCISCO DIVISION**

16 MARC OPPERMAN, et al.,  
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 Plaintiffs,  
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 v.  
 19 PATH, INC., et al.,  
 20  
 Defendants.

Case No.: 13-cv-00453-JST

**DEFENDANTS' JOINT OPPOSITION AND  
 REQUEST TO STRIKE PLAINTIFFS'  
 IMPROPERLY NOTICED MOTION FOR  
 CONSOLIDATION OR, ALTERNATIVELY,  
 SET A BRIEFING SCHEDULE**

DATE: October 15, 2013  
 TIME: 3:00 p.m.  
 COURTROOM: 9  
 JUDGE: Hon. Jon S. Tigar

**THIS DOCUMENT RELATES TO ALL  
 CASES:**

*Opperman v. Path, Inc.*, No. 13-cv-00453-JST  
*Hernandez v. Path, Inc.*, No. 12-cv-1515-JST  
*Pirozzi v. Apple, Inc.*, No. 12-cv-1529-JST  
*Gutierrez v. Instagram, Inc.*, No. 12-cv-6550-JST  
*Espitia v. Hipster, Inc.*, No. 13-cv-0432-JST

## **I. INTRODUCTION**

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Defendants Apple, Inc., Chillingo Ltd., Electronic Arts, Inc., Facebook, Inc., Foodspotting, Inc., Foursquare Labs, Inc., Gowalla Inc., Instagram, Inc., Kik Interactive, Inc., Path, Inc., Rovio Entertainment Ltd. s/h/a Rovio Mobile Oy, Twitter, Inc., Yelp! Inc. and ZeptoLab UK Limited (collectively "Defendants") respectfully request that the Court strike the request for consolidation and arguments relating to that request from Plaintiffs' Motion for Consolidation Pursuant to Fed. R. Civ. P. 42(a) and Appointment of Interim Co-Lead Class Counsel Pursuant to Fed. R. Civ. P. 23(g) ("Plaintiffs' Motion"). [Doc. 383] Plaintiffs' counsel in the *Hernandez* and *Pirozzi* cases improperly noticed this Motion for Consolidation for the hearing on October 15, 2013.<sup>1</sup>

## **II. PLAINTIFFS' MOTION FOR CONSOLIDATION SHOULD BE STRICKEN**

Plaintiffs' motion for consolidation, which purports to be at the Court's request,<sup>2</sup> falls demonstrably outside the scope of the Court's September 16, 2013 Order. [Doc. 368] That Order instructed Plaintiffs to provide supplemental briefing *only* on the issue of the organization of lead class action counsel. Specifically, in response to the Plaintiffs' Stipulation seeking the designation of four law firms as co-lead interim class counsel [Doc. 352], the Court advised Plaintiffs that it is "unlikely to appoint four interim co-lead counsel in this case" and instructed them to "provide supplemental briefing on how they intend to limit the duplication of effort on behalf of the proposed class" if they propose more than one firm as interim lead counsel. The Order further instructed the Plaintiffs to file their briefs by October 4, 2013, and scheduled a hearing "on this matter" for October 15, 2013.

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<sup>1</sup> Counsel for the *Opperman* Plaintiffs have not raised the issue of consolidation in their supplemental briefing.

<sup>2</sup> Plaintiffs erroneously represent in their motion that the Court requested Plaintiffs to move for consolidation. *See* Plaintiffs' Motion, at 2 ("Per the Court's request, Moving Plaintiffs bring this motion for consolidation and appointment of lead counsel...").

1 The September 16 Order is devoid of any reference whatsoever to a motion for  
2 consolidation. In fact, Plaintiffs' Motion contravenes this Court's prior Orders which ordered  
3 relation of the above-referenced cases, and directed the parties to make all filings in the  
4 *Opperman* case with reference to the relevant related cases.<sup>3</sup> [Doc. 322, 331] The Court's  
5 Scheduling Order instructing Plaintiffs to file a consolidated amended complaint did not change  
6 those Orders. [Doc. 345] Accordingly, Defendants respectfully request that the Court strike the  
7 Plaintiffs' improperly noticed motion for consolidation and arguments made in support thereof.

8 Alternatively, if the Court allows the motion to proceed, Defendants respectfully request  
9 that the Court set a briefing schedule on Plaintiffs' Motion that allows Defendants sufficient  
10 opportunity to prepare a substantive response.

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27 <sup>3</sup> Plaintiffs likewise have mischaracterized the caption in the Consolidated Amended Class  
28 Action Complaint as "In re: Apple iDevice Address Book Litigation." [Doc. 362]

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CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2013, I electronically filed the foregoing with the Clerk of Court using the EM/ECF system which will send a notice of electronic filing to all counsel of record who have consented to electronic notification.

/s/ Shelley G. Hurwitz

Shelley G. Hurwitz